

October 18, 2022

TO: ALL SCHOOL DISTRICTS, COUNTY SUPERINTENDENTS AND OTHER INTERESTED PARTIES

TITLE 2. STATE ALLOCATION BOARD

NOTICE OF PROPOSED EMERGENCY REGULATORY ACTION

In accordance with Assembly Bill 1302, Chapter 713, Statutes of 2006, enclosed are proposed emergency regulations adopted by the State Allocation Board (SAB) at its meeting on September 21, 2022. The proposed regulations, including the full text of the Grant Agreement master templates and the Finding of Emergency are attached to this Notice. These documents can also be accessed on the Office of Public School Construction's (OPSC) website at: <https://www.dgs.ca.gov/OPSC/Resources/Page-Content/Office-of-Public-School-Construction-Resources-List-Folder/Laws-and-Regulations>.

INFORMATIVE DIGEST/POLICY OVERVIEW STATEMENT

At its meeting on September 21, 2022, the SAB approved proposed regulations, on an emergency basis, that would shorten the fund release deadlines with the direct Apportionment process for purposes of more efficiently distributing the General Fund proceeds, or any other available proceeds, to those projects that would be able to quickly use the funds. The Governor signed into law Assembly Bill (AB) 181, Chapter 52, Statutes of 2022, the Committee on Budget: Education Finance: Education Omnibus Budget Trailer Bill, on June 30, 2022. The bill appropriated, for the 2022/23 fiscal year, \$1.3 billion in one-time General Fund dollars to the SAB for allocation to eligible SFP projects, specifically new construction and modernization projects. In addition to the \$1.3 billion, the Legislature has declared its intent to appropriate an additional \$2,060,500,000 from the General Fund in the 2023/24 fiscal year and an additional \$875 million from the General Fund in the 2024/25 fiscal year for the same purposes, funding eligible new construction and modernization projects under the SFP until December 31, 2025.

As a result of receiving funding for the SFP that is not contingent on bond sales, the SAB is able to return to using an existing funding process that allows for Apportionments to be made on a flow basis outside the current Priority Funding process, which is designed to accommodate twice yearly bond sales. Making Apportionments on a flow basis will enable school districts to more quickly and efficiently access much needed cash for construction projects. In order to ensure that cash moves quickly once allocated to school districts, the change to the regulations shortens the deadlines for fund release from 18 months to either 180 calendar days for non-financial hardship school districts or 365 calendar days for school districts that qualify for financial hardship. Without this change, the General Fund proceeds could potentially sit unused for extended periods of time.

Background and Problem Being Resolved

The problem being resolved is not a problem but a funding opportunity in which projects that are construction ready are able to receive an Apportionment outside the Priority Funding process.

Current Priority Funding Process

The Priority Funding Process is a process by which school districts submit certification requests for cash for projects that have received unfunded approvals and are sitting on the Unfunded List (Lack of AB 55 Loans). Priority Funding certification requests are submitted twice a year during two specific 30-day filing periods, are good for six months, and the requests indicate a school district's desire to convert a project's unfunded approval to an apportionment. For example, one of the 30-day filing periods for school districts to submit certification requests began May 11, 2022 and ended June 9, 2022. The certification requests received during this 30-day filing period are valid from July 1, 2022 through December 31, 2022 for school district projects to be eligible for cash from the Fall 2022 General Obligation Bond sale. The next 30-day filing period for school districts to submit certification requests will begin November 9, 2022 and will end December 8, 2022. The certification requests received during this 30-day filing period are valid from January 1, 2023 through June 30, 2023 for their projects to be eligible for cash from the Spring 2023 General Obligation Bond sale.

Direct Apportionment Process

In addition to the method of providing funding to convert unfunded approvals as noted above, the one-time \$1.3 billion General Fund appropriation is an opportunity for cash to be allocated quicker than expected for those projects that are construction ready. This process would allow the SAB to apportion funds on an on-going monthly basis.

As noted in the introductory paragraph on the first page, the Finding of Emergency and proposed regulations, including the full text of the Grant Agreement master templates are attached to this Notice. These documents may be viewed on OPSC's website at: <https://www.dgs.ca.gov/OPSC/Resources/Page-Content/Office-of-Public-School-Construction-Resources-List-Folder/Laws-and-Regulations>. Copies of the proposed regulations and Finding of Emergency will be mailed to any person requesting this information by using the OPSC contact information set forth below. The proposed regulations provide an efficient mechanism for providing apportionments to projects outside the typical Priority Funding timelines. This ensures an equitable and streamlined process for school construction projects, as well as maintaining the integrity of the SFP funding process.

OPSC, on behalf of the SAB, intends to submit the emergency regulations to the Office of Administrative Law (OAL) in October 2022. The following is an overview of the proposed regulations.

Summary of the Proposed Regulations

A summary of the proposed regulations are as follows:

Existing Regulation Section 1859.2 represents a set of defined words and terms used exclusively for these regulations. These definitions provide clarity to OPSC and school districts on program concepts and requirements. The proposed amendment reflects the revision date for the Grant Agreement templates.

Existing Regulation Section 1859.90 specifies the process for school districts to request the release of funds for SAB-approved apportionments and requires that the requests be submitted within 18 months of the SAB apportionment approval. The proposed regulatory amendments align the direct Apportionment process with the timelines of the existing Priority Funding process

by eliminating the 18-month timeline to submit a valid Form SAB 50-05 and Grant Agreement and changing it to 180 days to request the release of funds for non-financial hardship school districts and 365 days for those school districts approved with financial hardship status. In addition to these amendments, the language reference to the Pooled Money Investment Board (PMIB) is being removed as the SFP has not received financing in advance of bond sales from the PMIB in 13 years and there is no indication that this will be a source of funds in the near future. Leaving this language in this section is not necessary for the direct Apportionment process.

Existing Regulation Section 1859.90.2 authorizes the SAB to establish 30-calendar day certification filing periods to distribute available State school bond funding to school districts that request to convert an unfunded approval to an apportionment. The proposed amendment in subsection (a)(5) removes “18 month” in order to align with the proposed changes in Section 1859.90 above, as well as correct a cross reference.

The existing grant agreement templates include sections relevant to funding provided by the New Construction Program, the Modernization Program, the Charter School Facilities Program, and the Career Technical Education Facilities Program. The grant agreements are entered into for every future funding application that is processed; therefore, each grant agreement will contain the relevant program’s sections. The grant agreements were developed to address the Office of Statewide Audits and Evaluation’s audit findings by improving program oversight and expenditure accountability. The grant agreement also includes changes that implement the trailer bill language (AB 99, Chapter 15, Statutes of 2017), which the Governor signed into law on June 27, 2017. The grant agreements serve as binding documents and key resources that define the responsibilities of the state and school districts from the determination of the amount of eligible state funding to the reporting of all project funds, including any savings achieved. This ensures transparency and accountability for the program grants being awarded under the SFP. The proposed amendments make subtle changes that align themselves with the amended direct Apportionment process.

Overall, the proposed regulations address the shortened direct Apportionment process of funding SFP projects with funds made available from unexpected cash proceeds from sources other than bond funds outside of the Priority Funding Process. The proposed regulations do not supersede the Priority Funding Process; rather, the proposed regulations streamline the funding process when cash proceeds are made available to fund projects under the SFP that are not dependent on the timing and occurrence of bond sales.

SUBMISSION OF COMMENTS

Government Code Section 11346.1(a)(2) requires that, at least five working days prior to submission of the proposed emergency action to the OAL, the adopting agency provide a Notice of the Proposed Emergency Action to every person who has filed a request for notice of regulatory action with the agency. After submission of the proposed regulations to the OAL, the OAL shall allow interested persons five calendar days to submit comments on the proposed regulations as set forth in Government Code Section 11349.6.

Any interested person may present statements, arguments or contentions, in writing, submitted via U.S. mail, email or fax, relevant to the proposed regulatory action. Written comments submitted via U.S. mail, email or fax must be received at the OAL within five days after the SAB submits the regulations to the OAL for review.

Please reference submitted comments as regarding “Emergency Regulations to Allocate Monies Appropriated From Non-Bond Sources,” addressed to:

Reference Attorney

Mailing Address: Office of Administrative Law
300 Capitol Mall, Suite 1250
Sacramento, CA 95814

E-mail Address: staff@oal.ca.gov

Fax No.: (916) 323-6826

For the status of the SAB submittal to the OAL for review, and the end of the five-day written submittal period, please consult the website of 1) the OAL at www.oal.ca.gov under the heading “Emergency Regulations,” and 2) OPSC at: <https://www.dgs.ca.gov/OPSC/Resources/Page-Content/Office-of-Public-School-Construction-Resources-List-Folder/Laws-and-Regulations>, then scroll down to School Facility Program “Pending Regulatory Changes.”

Pursuant to Title I, Section 55, please send a copy of written comments regarding the proposed regulatory action, as well as requests for a copy of the proposed regulatory action, and questions concerning the substance of the proposed regulatory action, addressed to:

Lisa Jones, Regulations Coordinator

Mailing Address: Office of Public School Construction
707 3rd Street, 4th Floor
West Sacramento, CA 95605

E-mail Address: lisa.jones@dgs.ca.gov

AGENCY CONTACT PERSONS

General or substantive questions regarding this Notice of Proposed Emergency Regulatory Action may be directed to Ms. Lisa Jones at (279) 946-8459. If Ms. Jones is unavailable, these questions may be directed to the backup contact person, Mr. Michael Watanabe, Chief of Administrative Services, at (279) 946-8463.